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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/557,107	12/29/2006	Nicolaas Theunis Rudie van As	09246/RPM	5350
1933 7590 11/06/2009 FRISHAUF, HOLTZ, GOODMAN & CHICK, PC 220 Fifth Avenue 16TH Floor NEW YORK, NY 10001-7708				
EXAMINER				
CHOO, MUNSOON				
ART UNIT		PAPER NUMBER		
2617				
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11/06/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/557,107

**Applicant(s)**

VAN AS ET AL.

**Examiner**

MUNSOON CHOO

**Art Unit**

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1-4, 6-8 rejected under 35 U.S.C. 103(a) as being unpatentable over Kanerva et al. (WO 2054803 hereinafter "Kanerva"), and further in view of Bouthors (US 2002/0083411 hereinafter "Bouthors") and Kavanti (US 2007/0004333).

Re claim 1, Kanerva discloses a method for processing digital communication traffic in a network comprising a central communication processing structure including a communication server and a system server and a number of distributed devices of users designed for communication with the central communication processing structure, comprising:

(Abstract: Message Centre (MC) is the communication server. The third party(retrieves information from a database (DB), and add said information to the message) or the MC can be the system server)

the communication server receiving a communication coming from one of the distributed devices which communication is addressed to another one of the distributed devices (Fig 1 ref 1A and 1D), the communication comprising a header (Note: Kanerva's message should have header inherently , but didn't specifically disclose said "header". Kavanti discloses "header" in the message. See Kavanti, P [43]) including sender address information and receiver address information (Fig 1 ref 1A to 1D: Message Centre knows the message comes from subscriber A (sender address) and also to destination subscriber B (receiver address)), and message content which includes a user inserted code,

Note: Kanerva's message content includes "advertisements allowed by subscriber A (subscriber A's preference)" instead of "user inserted code".

Bouthors discloses: a user inserted code

(Bouthors, abstract: "user inserted active code", P [38]-[39]: Insertion of active code, P [1]: radiotelephone)

It would be obvious to one of ordinary skill in the art to modify Kanerva, and have user inserted active code on Kanerva's message content as taught by Bouthors, thereby will optimize the data lookup at the user terminal as discussed by Bouthors.

And to modify Kanerva, and have header in the message as taught by Kavanti, thereby will have more capacity efficient data messaging as discussed by Kavanti.

in reaction to the user inserted code in the message content of the received communication (Page 3 L33: According to the information (modified by Bouthors' user code) in the message), sending the communication to the system server (Page 3 L28-36: Advertisement is retrieved from database); Note: Applicant, fig 5: system server 503 directly interacts (such as retrieve info) with database 504

the system server checking whether the received communication meets at least one condition applicable to the communication or the sender;  
(Page 2, lines 18-30: MC adds advertisement, which requires condition to be met)  
(Page 3, lines 28-36: Requires allowance from subscriber A)

adding a message to the communication based upon the user inserted code (Bouthors, P [42]-[45]: base on the active code, then...) included in the communication in reaction to meeting the condition and sending the communication including the added message to the communication server; and  
(Page 2, lines 18-30: MC adds advertisement, which requires condition to be met)

(Abstract: A third party retrieves information (adds advertisement information) into the message and transmits (via communication server) to the recipient)

It would be obvious to one of ordinary skill in the art to modify Kanerva, and have the contidion of base on the types of different active codes as taught by Bouthors, thereby will optimize the data lookup at the user terminal as discussed by Bouthors.

the communication server receiving back the communication from the system server and sending the communication which has been received back to the addressed device.  
(Page 2, lines 18-30, abstract)

Re claim 2, Kanerva, Bouthors and Kavanti as a whole disclose a method according to claim 1, wherein the check comprises: checking whether a coding of the device from which the received communication has been received meets a criterion.  
(Page 2, lines 18-30)

(Page 3, lines 28-36: The message received by subscriber B meets a criterion, which is "the added message" is added from a list of advertisers allowed by subscriber A. Note that in claim 1, "a list of advertisers" has been modified by Bouthors' "user inserted code")

Re claim 3, Kanerva, Bouthors and Kavanti as a whole disclose a method according to claim 1, wherein the check comprises: selecting a message from a number

of messages depending on the result of the check.

(Page 3 lines 28-36: The advertisements allowed (messages selected to be added as a result of checking subscriber A's allowed advertisers) by subscriber A)

Re claim 4, Kanerva, Bouthors and Kavanti as a whole disclose a method according to claim 3, wherein selecting a message from a number of messages takes place depending on the user inserted code in the received communication.

(Page 3 lines 28-36: Depends on the advertisements allowed by subscriber A or depends on subscriber A's preference (modified by Bouthors' user code))

Re claim 6, Kanerva, Bouthors and Kavanti as a whole disclose a method according to claims 3, wherein selecting takes place depending on data stored in advance related to the sender or the recipient.

(Page 4 lines 18-23: storing information on advertisements accepted or preferred by subscriber B)

Re claim 7, Kanerva, Bouthors and Kavanti as a whole disclose a method according to claim 1, further comprising registering, for at least a number of the devices or users, data related to sent communications and the messages added to them for each device or each user separately, and

(Page 3 lines 28-36: Subscriber A has been registered because the database has a list of advertisements that are allowed by subscriber A)

(Abstract: Billing database 31 has data related to the sent communications (message) so that it can charge advertiser's account for the added advertisement)

recording data in at least one payment file depending on mutations of data related to sent communications and the messages added to them.

(Abstract: Data can be recorded into billing database, and said data can be retrieved into a report (file).)

Re claim 8, this claim corresponds to claim 1.

4. Claim 5 rejected under 35 U.S.C. 103(a) as being unpatentable over Kanerva, Bouthors, Kavanti as applied to claim 1 above, and further in view of Frerichs et al. (US 6,684,249 hereinafter "Frerichs").

Re claim 5, Kanerva, Bouthors and Kavanti as a whole disclose a method according to claim 3, wherein selecting takes place depending on variable data determined upon sending the communication which relate to the sender or the recipient, such as date and/or time and/or location of the sender or the recipient.

(Note: Selection can depend on variable data such as :)

(Page 4 line 11-13: Advertisement related to sports gear, preferred by subscriber A)

(Page 4 line 23-25: Topics picked by subscriber B)

(Page 4 line 35-36: Be selected on criteria set by a network operator, a regulator or a religious instance)

Note: Kanerva didn't specifically disclose said variable data is:

- date and/or time and/or location of the sender or the recipient

(Note: Variable data can be type of information, thus it suggests a rational for modification)

Frerichs discloses:

date and/or time and/or location of the sender or the recipient.

(Frerichs, C14 L40-53: based upon "user profile", wherein said user profile can be geographic region (location) and also be other information such as "time of day (includes time and date)")

It would be obvious to one of ordinary skill in the art to modify Kanerva, and have user profile which has information such as location and time of day as taught by Frerichs, thereby will insert advertisement based upon a user profile through streaming audio as discussed by Frerichs.

#### *Contact*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MUNSOON CHOO whose telephone number is (571)270-7140, fax number is (571)-270-8140 and email is munsoon.choo@uspto.gov. The examiner can normally be reached on Monday through Friday 7:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Corsaro can be reached on (571)272-7876. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Munsoon Choo/

Examiner, Art Unit 2617

/NICK CORSARO/

Supervisory Patent Examiner, Art Unit 2617